(2)

IN THE HIGH COURT OF MADHYA PRADESH : AT JABALPUR (M.P.)

CRIMINAL APPEAL No. 1283/1994.

Division Bench (Criminal)

Banveer son of Kaleshwar,
aged about 24 years,
Resident of village Jabla,
Police Station Jashpurnagar,
Distt. RAIGARH (MP).

APPELLANT
ACCUSED

1340

- Versus -

Filed on 17/10/94
by Shri Iqbal Singh
Advocate

State of Madhya Pradesh, through
the Station House Officer,
Police Station Jashpurngar,
Distt. RAIGARH (MP).

R. to D. R.
Dt. 1.7.96

RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

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(32)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.App. 1338/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C.BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

25.01.2006

Miss Sharmila Singhai, Advocate for appellant Vasu @ Vasudeo in Criminal Appeal No.1338/94.

Mr. J.S. Baraik, Advocate for appellant Banbir in Criminal Appeal No.1283/94.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J

Criminal Appeal No.1338/94 filed by accused/appellant Vasu @ Vasudev & Criminal Appeal No.1283/94 filed by accused/appellant Banbir are arising out of the same judgment dated 5.9.1994 passed by learned Additional Sessions Judge, Jashpurnagar in S.T. No.238/93 and are relating to the same incident, therefore, they are being disposed of by this common judgment.

By this appeal accused/appellants Vasu @ Vasudev & Banbir have questioned the legality of judgment of conviction and order of sentence dated 5.9.1994 passed by learned Additional Sessions Judge, Jashpurnagar in S.T. No.238/93 whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 302 of the Indian Penal Code for committing murder of deceased Prabal sentenced each of the accused to undergo imprisonment for life.

The prosecution case, in brief, is that on 10.3.1993 deceased Prabal went to the house of accused/appellant Vasu @ Vasudeo

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

where Vasu & Prabal both had consumed Handi (home made intoxicant substance) and when Prabal was going, appellant Vasu @ Vasudeo assaulted Prabal with a lathi, as a result of which he fell down and became unconscious, at that time accused/appellant Banbir also came there and both the accused/appellants took Prabal outside the house of Vasu @ Vasudeo on side of road and there they again attacked Prabal on his head with stones, as a result of which he died spontaneously. A report (Ex.P-1) of the matter was lodged by PW-2 Mangna, father of deceased. The Investigating Officer after registering the case under Ex.P-1 for commission of offence under Section 302 of the I.P.C. left for the scene of occurrence and prepared the Panchanama (Ex.P-2) of the dead body of Prabal after giving notice to the Panchas. Accused Vasu @ Vasudeo while in the police custody gave memorandum (Ex.P-3) regarding the place where he kept the club, weapon of offence and in pursuance of that he got recovered club (lathi) under Ex.P-4. Accused Banbir while in custody also gave memorandum Ex.P-5 regarding the stone and the club with which Prabal was attacked and in pursuance of that the club was recovered under Ex.P-6 and the stone was recovered under Ex.P-7. Full pant & T-shirt of accused Banbir stained with blood were taken into possession under Ex.P-8. Another stone was taken into possession at the instance of accused Banbir under Ex.P-9. The Investigating Officer also took into possession the blood stained earth and plain earth from the house of accused Vasu @ Vasudeo under Ex.P-10 and from the place where the deceased was attacked with the stones under Ex.P-11. The Investigating Officer sent the body of

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deceased for post mortem examination to the Central Hospital, Jashpurnagar, where Dr. Sanjay Goel (PW-9) conducted the postmortem on the body of deceased and prepared the postmortem report Ex.P-12. Recovered stones were sent for examination by the doctor under Ex.P-13 and the doctor opined that the injuries which were found on the head of deceased could be caused by the stones recovered at the instance of the accused/appellants. Patwari prepared the site plans Ex.P-14 & Ex.P-17. Recovered articles were sent to Forensic Science Laboratory, Sagar for examination from where report (Ex.P-21) was received.

After completion of investigation, charge sheet was filed against the accused/appellants in the Court of Judicial Magistrate First Class, Jashpurnagar, who in turn committed the case to learned Sessions Judge, Raigarh from where learned Additional Sessions Judge, Jashpurnagar received the case on transfer for trial.

The prosecution in order to establish the offence against the accused/appellants examined 11 witnesses. On the other hand, learned Additional Sessions Judge recorded the statements of accused/appellants under Section 313 of the Cr.P.C. in which they denied the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused persons convicted & sentenced each of the accused in the manner as mentioned in Para 1 of this judgment.

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We have heard Miss Sharmila Singhai, Advocate for accused/appellant Vasu @ Vasudeo, Mr. J.S. Bariak, Advocate for accused/appellant Banbir and Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, P.L. for the State/respondent.

Homicidal death of Prabal is not in dispute.

As far as the involvement of accused/appellant Vasu @ Vasudeo in committing the murder of Prabal is concerned, Miss Singhai, learned counsel for appellant Vasu @ Vasudeo argued that height of room where accused Vasu @ Vasudeo has said to have assaulted deceased Prabal was about 6 feet and from there it was not possible to attack the deceased with Lathi. She further argued that evidence of PW-1 Ratnu and PW-4 Railo based on which the accused/appellant has been convicted does not inspire the confidence and is not worth reliance.

As far as the involvement of accused/appellant Banbir in committing the murder of Prabal is concerned, Mr. Baraik, learned counsel for the accused/appellant argued that the incident is said to have been taken place in the house of accused Vasu @ Vasudeo, therefore, accused Banbir has been falsely implicated in the crime. Moreover, from the evidence of PW-3 Lenda it has come on record that on account of police harassment statement was given by this witness. He further argued that from the evidence of PW-1 Ratnu & PW-4 Railo the case against accused Banbir was not made out.

On the other hand, learned Additional Public Prosecutor along with Panel Lawyer supported the judgment of the trial Court.

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Having heard learned counsel for the parties in order to appreciate the arguments advanced by learned counsel for the parties, we have scrutinized the evidence of prosecution witnesses.

PW-1 Ratnu, who is none else than the father of accused Vasu @ Vasudeo, has stated that accused Vasu @ Vasudeo is his son and accused Banbir is his nephew. On the fateful day at about 7.00 p.m. in the evening Vasu & Prabal came to his house, asked for Handi (home made intoxicant substance), both of them consumed Handi and thereafter Vasu said let us go and when they were leaving Vasu attacked Prabal with a lathi on his head as a result of which Prabal fell down. Thereafter, both the accused took Prabal towards south side near Jighar Nala. As a result of lathi blow Prabal became unconscious, at that time both the accused were having lathi in their hands and after some time Vasu came back to his house and disclosed that Prabal has been murdered. When he asked him as to why he has murdered, Vasu further said 'you remain silent otherwise you will be beaten'. There was a dispute between Prabal & Kaleshwar regarding the land. Thereafter, he went along with people of the vicinity to the place where body of Prabal was lying and saw that there were injuries on the head of Prabal. In Para-5 of cross-examination this witness has stated that the dispute regarding land was between Mangna, father of deceased Prabal & Kaleshwar, father of accused Banbir.

PW-3 Lenda has stated in his evidence that he knows accused persons. On the day of Sarhul festival there was a quarrel and accused persons assaulted Prabal with bamboo lathis as a result of

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which Prabal fell down. PW-4 Railo, mother of accused Vasu has stated that accused Vasu and Prabal were at their residence, Vasu attacked Prabal with lathi on his head as a result of which Prabal fell down. At that time accused Banbir also came there and both of them lifted Prabal and taken away him. After some time Vasu returned and said that Prabal has been murdered.

In view of the above evidence of father and mother of accused Vasu @ Vasudeo i.e. PW-1 & PW-4, who have clearly stated that on the fateful day Prabal came to their house, Vasu & Prabal consumed Handi (home made intoxicant substance) and when they were leaving their son Vasu attacked deceased with a lathi as a result of which he fell down and became unconscious. At that time, accused Banbir also came and both of them lifted Prabal and took him outside. As per evidence of Dr. Sanjay Goel (PW-9) there were injuries on the head of deceased Prabal, his right parietal bone & temporal maxilla were fractured and all these bones pierced into the brain. There were subdural & intradural hamerohage and tissues of brain were crushed. Stones, which were recovered at the instance of accused/appellants, were shown to this doctor and as per report Ex.P-13 he gave opinion that the injuries which were found on the head of Prabal, could have been caused by the stones in question. Moreover, as per FSL report Ex.P-21, the full pant of accused Banbir, which was taken into possession by the Investigating Officer under Ex.P-8, was found stained with blood.

As per evidence of PW-1 Ratnu & PW-4 Railo in the first instance accused Vasu attacked Prabal with lathi and when he

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became unconscious accused Banbir & Vasu lifted Prabal and took him outside on the road and as per medical evidence the injuries which were found on the head of the deceased could have been caused by the stones recovered at the instance of the accused persons. Accused Vasu @ Vasudeo made extrajudicial confession before his mother PW-4 Railo and father PW-1 Ratnu. Stones which were recovered at the instance of accused Banbir were found stained with blood as per Ex.P-21 and even the full pant of accused Banbir which was taken into possession under Ex.P-8 was also found stained with blood and it has come on record that there was a dispute of agricultural land between father of accused Banbir and father of deceaed Prabal.

Therefore, in view of the above ocular and circumstantial evidence the involvment of the accused/appellants in committing the murder of deceased Prabal is established beyond reasonable doubt. The arguments advanced by the counsel for the accused/appellants is devoid of merit and we do not find any illegality or infirmity in the finding of the trial court convicting the accused/appellants for commission of murder of deceased Prabal.

In the result, the appeals fail, same are liable to be dismissed and they are hereby dismissed.

Since accused Banbir is on bail, therefore, his bail bonds are cancelled and he be sent to the concerned jail fortwith to serve out the sentence.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-

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